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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/816,289	03/23/2001	Carl R. Merrill	PNC-001	6112

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EXAMINER

GUCKER, STEPHEN

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 04/22/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/816,289

Applicant(s)

Merrill et al.

Examiner

Stephen Buckner

Group Art Unit

1647

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 1/29/03
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-26 is/are pending in the application.
- Of the above claim(s) 2, 9-26 is/are withdrawn from consideration.
- ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- ☒ Claim(s) 1 & 3-8 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d):
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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### Part III DETAILED ACTION

1. Applicant's election with traverse of Group II., claims 1 and 3-8 in Paper No. 9 is acknowledged. The traversal is on the ground(s) that the restriction is improper because it attempts to require restriction of the generic method recited in claim 1 to the species of the method recited in claims 4-8 and claims 1, 3, and 4 are linking claims. This is not found persuasive because there is no allowable generic or linking claim in the instant Application.

2. Claims 2 and 9-26 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction requirement in Paper No. 9.

The requirement is still deemed proper and is therefore made FINAL.

3. The disclosure is objected to because of the following informalities: on page 14, line 18, a closing parentheses is missing from the text.

Appropriate correction is required.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

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5. Claims 1 and 3-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Gizurarson et al. (US 5,942,237, "Gizurarson"). Gizurarson teaches methods employing diphtheria toxoid given intranasally to mammals with adjuvants as initial immunizations and booster vaccinations (column 5, line 65 to column 6, line 8; column 6, lines 41-64; and column 7, lines 30-50).

Administration to humans is contemplated (column 1, lines 8-13) along with the optional use of propellant (column 5, lines 1-22 and claim 18). Also see the abstract and claims 4, 8, and 10-11.

6. Claims 1, 3-5, and 7-8 are rejected under 35 U.S.C. 102(e) as being anticipated by US 2002/0187157 A1 (Jensen et al., "Jensen"). Jensen teaches the use of diphtheria toxoid conjugated to amyloid to induce amyloid downregulation (page 11, paragraph 0126) to treat Alzheimer's disease, a neurodegenerative disease. Jensen also teaches adjuvants (page 12, paragraph 0136), boosters (page 13, paragraph 0157), and injections or oral administration (page 12, paragraph 0137). Also see claims 11, 27, and 33.

7. No claim is allowed.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gucker whose telephone number is (703) 308-6571. The examiner can normally be reached on Monday to Friday from 0930 to 1800. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz, can be reached on (703) 308-4623. The fax phone number for this Group is currently (703) 308-4242, but Applicant should confirm this by phoning the Examiner before faxing.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0196.

SG

Stephen Gucker

April 21, 2003

*Gary L. Kunz*  
GARY KUNZ  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600